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RHEHNSC/NSC WASHDC IMMEDIATE
RHHMUNA/CDRUSPACOM HONOLULU HI IMMEDIATE
RUEKJCS/JOINT STAFF WASHINGTON DC IMMEDIATE
RUEKJCS/SECDEF WASHINGTON DC IMMEDIATE
RHHMUNS/COMSOPCPAC HONOLULU HI IMMEDIATE
RUHEHMS/COMMARFORPAC IMMEDIATE
RUCOMFJ/CG III MEF IMMEDIATE

CONFIDENTIAL SECTION 01 OF 02 MANILA 004985

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STATE FOR EAP, PM, AND EAP/MTS
USPACOM ALSO FOR FPA HUSO AND J5
SECDEF/OSD/ISA/AP (TOOLAN/BAILEY)
JOINT STAFF/J5 (WILKES/ROBINSON/CLEMONS)

E.O. 12958: DECL: 12/13/2016

TAGS: PREL CASC MARR RP

SUBJECT: NEXT STEPS IN REGAINING CUSTODY OF LANCE CORPORAL SMITH

REF: MANILA 4968 AND PREVIOUS

Classified By: (U) Ambassador Kristie A. Kenney
for reasons 1.4(b) and (d).

¶1. (C) Lance Corporal Smith remains in Philippine jail following Makati City Regional Trial Court Judge Pozon's December 13 ruling against a defense petition to return him to U.S. custody under the provisions of the Visiting Forces Agreement (VFA) (septel). Although the Philippine Executive Branch is now working to prepare an intervention in support of an expected motion by defense attorneys to the Court of Appeals to overturn this decision (most likely on December 14), clearly the time has come to ratchet up our response.

RATCHETING UP OUR RESPONSE

¶2. (C) Ambassador on December 13 chaired an inter-agency special working group to discuss options that would induce the Philippine Government to take more forceful steps to secure Lance Corporal Smith's return to U.S. custody and demonstrate its willingness and ability fully to comply with the VFA. Philippine leaders are now more noticeably engaged in addressing the courts about Philippine legal obligations under the VFA, but could still be even more pro-active and articulate. We agreed that probably the most expeditious manner to get their attention would be to revise -- or at least make clear to Philippine officials that we are considering revision of -- our travel warning on the Philippines to highlight a growing lack of USG confidence in the Philippine government's and judiciary's willingness and ability to uphold obligations under international agreements and law. Given the Philippines' dependence on the tourism sector (especially before Christmas) and its sensitivity to travel advisories in general, we believe this prospect might most immediately spur some more effective action. We also urge that the Department call in Ambassador Gaa to reiterate President Bush's December 8 message on the need to solve this problem expeditiously, and to raise the travel warning prospect.

ACTION AS OF DECEMBER 14

¶3. (C) Should the issue of custody remain unresolved as of

December 14, we recommend quick short-term measures that would indicate our concern, while still preserving core U.S. interests in the Global War on Terrorism. We would make clear to key Philippine officials what we are doing and why. We recommend:

-- canceling all new International Military Education and Training for Armed Forces of the Philippines personnel;
-- canceling all subject matter expert exchanges with the Philippine military; and,
-- canceling all attendance at upcoming Counterterrorism Fellowship and Asia-Pacific Center for Strategic Studies courses.

ACTION AS OF DECEMBER 15

¶4. (C) Should the issue of custody remain unresolved as of December 15, we recommend cancellation of the three U.S. Naval Ship port visits scheduled December 22-26.

ACTION AS OF DECEMBER 21

¶5. (C) Should the issue of custody remain unresolved as of December 21, we recommend cancellation of the annual Balikatan Exercise, the largest and most prominent of our bilateral exercises.

RE-EXAMINATION OF OTHER COURSES OF ACTION AFTER DECEMBER 22

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¶6. (C) In light of our own security interests in helping the Philippine Armed Forces capture High Value Targets in the ongoing offensive in Jolo, and in advancing the overall Mindanao peace process, we do not recommend any immediate changes in the deployment of the Joint Special Operations Task Force-Philippines (JSOTF-P). However, if the issue of custody remains unresolved as of December 15, we would examine ways to curtail some of its activities, such as bringing Liaison Coordination Elements back to Zamboanga and postponing medical missions or other civil-humanitarian operations. Should the issue of custody remain unresolved as of December 22, we would have to examine further scaling back of JSOTF-P presence or operations.

¶7. (C) We will also be examining our assistance by the U.S. Agency for International Development and by the Public Affairs Section to the judicial system, perhaps refocusing some assistance to improve understanding of international law and obligations. Regardless of the custody issue, Lance Corporal Smith still faces a perhaps lengthy appeal process, and it is now clear that Philippine judges are not fully cognizant of these aspects.

APPRECIATION OF SUPPORT

¶8. (C) We appreciate the strong support provided by other elements of the USG in dealing with this very difficult case, and are especially grateful for III MEF's interaction with the Philippine Consul General in Okinawa, and OSD's frank talks with the Philippine Defense Attaché in Washington.

¶9. (C) The VFA has since 1999 served as the bedrock for our military-to-military relationship with the Philippines. Until this point, it has functioned effectively. Should we be able to work through the current situation, we continue to believe that the long-term implementation of the VFA will not be in jeopardy and remains in the U.S. interest.

KENNEY